

Slide One

No FEAR Act of 2002

Version: 11/13

Slide Two Overview

- Congress passed the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act to ensure that the rights of employees, former employees, and applicants for employment are protected under discrimination, whistleblower, and retaliation laws.
- In accordance with the information presented on the following slides, you will be able to identify your rights under the No FEAR Act, and identify the basic provisions of the antidiscrimination laws, Whistleblower Protection Act, and EEO complaint process.

Slide Three Why is this training important?

- Federal agencies cannot function effectively when discrimination is practiced or tolerated.
- In order to improve agency accountability and increase compliance, all Federal agencies must comply with the No FEAR Act requirements.

Slide Four What does this mean to you?

- Greater awareness of your rights and protections against discrimination and retaliation in the workplace.
- More accountability for Federal agencies to enforce antidiscrimination and whistleblower protection laws.
- Enhanced responsibility on the part of DOT for preventing discrimination and retaliation in the workplace.

Slide Five What is the No FEAR Act?

- Congress enacted the No FEAR Act on May 15, 2002.
- The Act requires that "...Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws."

Slide Six Requirements of the No FEAR Act

- The Act requires Federal agencies to:
 - Train and notify employees, former employees, and applicants on their rights and protections under the antidiscrimination and whistleblower laws.
 - Reimburse the Treasury Judgment Fund for payments made in Federal District court cases involving violations of discrimination and whistleblower laws.
 - Post information on its public website relating to complaints of discrimination and provide an annual report to Congress.

Slide Seven Your Rights & Remedies

- The antidiscrimination laws protect you from discrimination concerning the terms and conditions of your employment.

Slide Eight Types of Employment Matters

- Employment matters covered by laws include:
 - Hiring, promotion, pay, leave, awards, assignments, training, suspensions, and terminations.
 - Requests for reasonable accommodation for religious reasons or for reasons based on disability.
 - Harassment or creation of a hostile work environment based on a protected basis.

Slide Nine Protected Bases

- Antidiscrimination laws also cover the harassment or the creation of a hostile work environment based on the following protected bases:
 - Race
 - Color
 - Religion

- Sex
- National origin
- Disability
- Age
- Genetic information
- Sexual orientation (DOT Policy and EO 13087)

Slide Ten Civil Rights Laws

- Upcoming slides will detail the following civil rights laws:
 - Title VII of the Civil Rights Act of 1964
 - Age Discrimination in Employment Act (ADEA) of 1967
 - The Rehabilitation Act of 1973
 - Americans with Disabilities Act Amendments Act of 2008 (ADAAA)
 - Genetic Information Nondiscrimination Act of 2008 (GINA)

Slide Eleven Title VII of the Civil Rights Act

- Title VII of the 1964 Civil Rights Act, as amended, protects employees from employment discrimination on the bases of sex, race, color, national origin, or religion.
- Gender, sexual harassment, pregnancy, gender identity, and sex stereotyping are considered forms of sex discrimination and are prohibited under Title VII.

Slide Twelve Title VII of the Civil Rights Act (cont.)

- Pregnancy Discrimination:
 - An employer cannot refuse to hire a pregnant woman because of her pregnancy, because of a pregnancy-related condition or because of the prejudices of co-workers, clients, or customers.

Slide Thirteen Title VII of the Civil Rights Act (cont.)

- Religion:
 - In addition to protection against discrimination because of religion, Title VII also establishes the agency's duty to provide

reasonable accommodation for an employee's religious beliefs unless doing so would impose an undue hardship on the employer.

Slide Fourteen Age Discrimination in Employment Act

- The Age Discrimination in Employment Act (ADEA) prohibits discrimination against persons who are 40 years of age or older.
- The Act protects individuals 40 years or older from employment actions based on stereotypes or stigmas directed at this age group.

Slide Fifteen The Rehabilitation Act

- The Rehabilitation Act of 1973 prohibits employment discrimination against qualified Federal employees with disabilities. In addition, agencies must provide reasonable accommodation for a qualified employee or applicant with a disability.
- The nondiscrimination standards of Title I of the Americans with Disabilities Act apply to Federal sector employees under Section 501 of the Rehabilitation Act, as amended, and its implementing rules and regulations.

Slide Sixteen ADA Amendments Act of 2008

- The ADA Amendments Act (ADAAA) of 2008 expanded coverage under the law, restoring the broad coverage intended by the Americans with Disabilities Act of 1990.
- The definition of **disability** remains:
 - a physical or mental impairment that substantially limits one or more major life activities of an individual,
 - a record of such an impairment, or
 - being regarded as having such an impairment.

Slide Seventeen The Rehabilitation Act (cont.)

- The terms “disability” and “qualified individual with a disability” do not include individuals currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.
- “Drug” means a controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C 812).

Slide Eighteen The Rehabilitation Act (cont.)

- However, the terms “disability” and “qualified individual with a disability” may not exclude an individual who:
 - has successfully completed a supervised drug rehabilitation program, or has otherwise been rehabilitated successfully, and is no longer engaging in the illegal use of drugs; or,
 - is participating in a supervised rehabilitation program and is no longer engaging in such use; or
 - is erroneously regarded as engaging in such use, but is not engaging in such use.

Slide Nineteen The Rehabilitation Act (cont.)

- A temporary or short term illness is not a disability.
- You must be qualified for your position.
- If you cannot perform the essential functions of the job, with or without reasonable accommodation, you are not qualified.

Slide Twenty Reasonable Accommodation

- A reasonable accommodation is an adjustment to the work situation or environment to enable you to perform your job, as long as it is not an undue hardship to the agency.
- The Rehabilitation Act of 1973, as amended, requires agencies to provide a reasonable accommodation to applicants and employees unless doing so would cause the agency undue hardship.

Slide Twenty One Reasonable Accommodation (cont.)

- The accommodation does not have to be specifically what is requested by the employee. It does have to be a reasonable, effective accommodation.
- The agency has no obligation to change performance standards or to eliminate essential functions of a position as a reasonable accommodation.

Slide Twenty Two Reasonable Accommodation (cont.)

- Review of Disability:
 - A physical or mental impairment that substantially limits one or more major life activities such as:
 - walking,
 - breathing,
 - hearing,
 - seeing,
 - as well as functions of the immune system and normal cell growth, etc.
 - This list is not all inclusive.

Slide Twenty Three The Rehabilitation Act

- Employers **may not** ask job applicants about the existence, nature, or severity of a disability.
- Applicants **may** be asked about their ability to perform specific job functions.
- A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs.

- Medical examinations of employees must be job-related and consistent with the employer's business needs.

Slide Twenty Four Genetic Information Nondiscrimination Act of 2008 (GINA)

- Genetic information means:
 - genetic testing of a person, and/or
 - genetic test results of an individual's family members, including any disease, disorder, or condition.
- GINA prohibits the agency from discriminating against an individual based on their genetic information in making employment decisions.

Slide Twenty Five Protection Against Retaliation

- Each of these antidiscrimination laws also makes it illegal to retaliate against a person because he or she:
 - opposed any practice made unlawful under any of the EEO laws,
 - filed a complaint of discrimination, or
 - participated in any stage of the administrative or judicial proceedings under the EEO laws.

Slide Twenty Six Executive Order 13087

- Prohibits discrimination in employment based on **sexual orientation**.
- The DOT Departmental Office of Civil Rights established procedures for processing complaints of discrimination based on sexual orientation.
- Lesbian, gay, and bisexual individuals may also experience sex discrimination under Title VII.
 - Adverse actions taken because of a person's failure to conform to sex-stereotypes.

Slide Twenty Seven If You Believe Discrimination Occurred Based on the Antidiscrimination Laws

- You have the right to file an EEO complaint.
- You have the right to a reasonable amount of official time to prepare and present your complaint.
- You have the right to official time to meet with a counselor or an investigator, or to participate in the hearing.
- Note: Official time is normally granted in terms of hours, not days.

Slide Twenty Eight Filing an Informal EEO Complaint

- You must contact your Operating Administration's (OA) Office of Civil Rights or the Departmental Office of Civil Rights (for OST matters) to initiate a pre-complaint within **45 calendar days** from:
 - becoming aware of the alleged discrimination, or
 - the effective date of the final personnel action.

Slide Twenty Nine Filing an Informal EEO Complaint (cont'd)

- You may ask for anonymity during the pre-complaint stage.
- If you decide to file a formal complaint that is accepted, your identity will be given to officials who have a need to know, pursuant to the Privacy Act.

Slide Thirty The EEO Counselor

- Gives the individual his or her written rights and responsibilities, and
- Offers traditional counseling or Alternative Dispute Resolution (ADR) to resolve the complaint.
- Mediation is the form of ADR that DOT uses to attempt resolution of EEO related disputes.

Slide Thirty One Primary Principles of Mediation

- Participation is voluntary.
- Information shared is intended to be confidential.
- The parties decide the outcome, not a judge.
- It is available at every stage of an EEO complaint process.

Slide Thirty Two Parties at the Mediation

- Employee
- Manager or supervisor from the organization with settlement authority
- Representative(s)
- Mediator(s)

Slide Thirty Three If the Complaint is not Resolved at the Pre-Complaint Stage

- You will receive a Notice of Right to File a Formal Complaint (NRF).
- You must file your formal complaint with the DOT Departmental Office of Civil Rights (DOCR) within **15 calendar days** from receipt of the NRF.

Slide Thirty Four If the Complaint is not resolved at the Pre-Complaint Stage (cont.)

- Employees covered by a negotiated bargaining agreement which permits allegations of discrimination may elect to proceed under the negotiated bargaining agreement, rather than filing a formal complaint of discrimination.
- **You cannot do both.**

Slide Thirty Five Other Relevant Laws

- The following slides will provide an overview of other laws which Federal agencies are held accountable for under the No FEAR Act:
- Marital Status and Political Affiliation

- Whistleblower Protection Act

Slide Thirty Six Marital Status & Political Affiliation

- Any employee who has authority to:
 - take,
 - direct others to take, or
 - recommend or approve any personnel action,
- **shall not** discriminate for or against
 - any employee, or
 - applicant for employment,
- on the basis of marital status or political affiliation.

Slide Thirty Seven Marital Status & Political Affiliation (cont.)

- Many of these rights may also be covered by a collective bargaining agreement.
- To understand your options for filing a complaint you may want to consult:
 - your union representative and/or
 - your bargaining agreement.
- If you believe discrimination has occurred on one of these bases, you may file a written complaint with the U.S. Office of Special Counsel (OSC).

Slide Thirty Eight Whistleblower Protection Act

- The Whistleblower Protection Act of 1989, as amended by the Whistleblower Protection Enhancement Act of 2012, provides protection from retaliation for making protected disclosures covering:
 - Federal employees,
 - former Federal employees, and
 - applicants for employment.

Slide Thirty Nine Whistleblower Protection Act (cont.)

- A **protected disclosure** occurs when an individual provides information she or he reasonably believes evidences:
 - violations of law, rule, or regulation;
 - gross mismanagement;
 - gross waste of funds;
 - an abuse of authority; or
 - a substantial and specific danger to public health or safety.
- But not when an employee discloses information that:
 - is specifically prohibited by law; or
 - may threaten national security.

Slide Forty Whistleblower Protection Act (cont.)

- You are protected from retaliation for making a protected disclosure.
- What constitutes retaliation:
 - taking a personnel action,
 - failing to take a personnel action, and/or
 - threatening to take a personnel action.

Slide Forty One Filing a Whistleblower Complaint

- How to report violations of the Whistleblower Protection Act:
 - Appeal directly to the Merit Systems Protection Board (MSPB)
 - Report to the Office of Inspector General (OIG)
 - File a complaint with the Office of Special Counsel (OSC)

Slide Forty Two Filing a Whistleblower Complaint (cont.)

- If you choose to file an appeal directly with the Merit Systems Protection Board (MSPB), your appeal must be based on an appealable action and filed:
 - no later than **30 calendar days** after the effective date of the action being appealed, or

- **30 calendar days** after receipt of the agency's decision, whichever is later.

Slide Forty Three Filing a Whistleblower Complaint (cont.)

- Or you can elect to file with the Office of Special Counsel (OSC)
- A complaint may be filed with OSC by using Form OSC-11, which can be obtained by contacting:
 - Office of Special Counsel (OSC)
 - Complaints Examining Unit
 - 1730 M Street, NW, Suite 218
 - Washington, DC 20036-4505
 - 1-800-872-9855 or 202-254-3670
- A complaint can also be filed electronically with OSC

Slide Forty Four For More Information

- For questions regarding antidiscrimination laws or policies and the EEO complaint process, refer to:
 - your OA Office of Civil Rights, or
 - the Departmental Office of Civil Rights website.
- For questions regarding the Whistleblower Protection Act, refer to:
 - your Human Resources Office, or
 - the Office of Special Counsel website.

Slide Forty Five Diversity Management

- DOT is committed to:
 - creating and maintaining a work environment that provides opportunity for all employees to maximize their potential and fully contribute to accomplishing the organization's mission.
 - not advantaging or disadvantaging any group.
 - ensuring that all employees treat each other with dignity and respect.

Slide Forty Six Summary

- You can expect swift and appropriate action where violations are substantiated.
- You can expect a work environment where you can perform to your highest potential and contribute to the effective operation of the DOT mission.
- Each of us is responsible and accountable for our actions.

Slide Forty Seven References and Points of Contact

- Departmental Office of Civil Rights:
www.civilrights.dot.gov
- No FEAR Act of 2002:
<https://www.civilrights.dot.gov/page/no-fear-act>
- Merit Systems Protection Board:
<http://www.mspb.gov/>
- Office of Special Counsel Complaints Examining Unit:
<https://www.osc.gov/oscefile/> or 1-800-872-9855
- Office of Inspector General (OIG): <http://www.oig.dot.gov/hotline> or 1-800-424-9071

Slide Forty Eight End of Course

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